

AMENDED IN SENATE JUNE 30, 2015

AMENDED IN SENATE JUNE 15, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 1506**

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**Introduced by Assembly Member Roger Hernández**

March 4, 2015

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An act to amend Sections ~~2699~~ 2699, 2699.3, and 2699.5 of the Labor Code, relating to employment.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1506, as amended, Roger Hernández. Labor Code Private Attorneys General Act of 2004.

The Labor Code Private Attorneys General Act of 2004 authorizes an aggrieved employee to bring a civil action to recover specified civil penalties, that would otherwise be assessed and collected by the Labor and Workforce Development Agency, on behalf of the employee and other current or former employees for the violation of certain provisions affecting employees. The act provides the employer with the right to cure certain violations before the employee may bring a civil action, as specified. For other violations, the act requires the employee to follow specified procedures before bringing an action.

Existing law requires an employer to provide its employees with specified information regarding their wages, including, among others, the inclusive dates of the period for which the employee is paid and the name and address of the legal entity that is the employer, either semimonthly or at the time of each wage payment and provides that the employer does not have the right to cure a violation of that requirement before an employee may bring a civil action under the act.

This bill would provide an employer with the right to cure a violation of ~~that~~ *the* requirement that an employer provide its employees with the inclusive dates of the pay period and the name and address of the legal entity that is the employer before an employee may bring a civil action under the act. The bill would provide that a violation of that requirement shall only be considered cured upon a showing that the employer has provided a fully compliant, itemized wage statement to each aggrieved employee, as specified. *The bill would limit the employer's right to cure with respect to alleged violations of these provisions to once in a 12-month period, as specified.* The bill would also delete references to obsolete provisions of law.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2699 of the Labor Code is amended to  
2     read:  
3     2699. (a) Notwithstanding any other provision of law, any  
4     provision of this code that provides for a civil penalty to be  
5     assessed and collected by the Labor and Workforce Development  
6     Agency or any of its departments, divisions, commissions, boards,  
7     agencies, or employees, for a violation of this code, may, as an  
8     alternative, be recovered through a civil action brought by an  
9     aggrieved employee on behalf of himself or herself and other  
10    current or former employees pursuant to the procedures specified  
11    in Section 2699.3.  
12    (b) For purposes of this part, "person" has the same meaning  
13    as defined in Section 18.  
14    (c) For purposes of this part, "aggrieved employee" means any  
15    person who was employed by the alleged violator and against  
16    whom one or more of the alleged violations was committed.  
17    (d) For purposes of this part, "cure" means that the employer  
18    abates each violation alleged by any aggrieved employee, the  
19    employer is in compliance with the underlying statutes as specified  
20    in the notice required by this part, and any aggrieved employee is  
21    made whole. A violation of paragraph (6) or (8) of subdivision (a)  
22    of Section 226 shall only be considered cured upon a showing that  
23    the employer has provided a fully compliant, itemized wage  
24    statement to each aggrieved employee for each pay period for the

1 three-year period prior to the date of the written notice sent  
2 pursuant to paragraph (1) of subdivision (c) of Section 2699.3.

3 (e) (1) For purposes of this part, whenever the Labor and  
4 Workforce Development Agency, or any of its departments,  
5 divisions, commissions, boards, agencies, or employees, has  
6 discretion to assess a civil penalty, a court is authorized to exercise  
7 the same discretion, subject to the same limitations and conditions,  
8 to assess a civil penalty.

9 (2) In any action by an aggrieved employee seeking recovery  
10 of a civil penalty available under subdivision (a) or (f), a court  
11 may award a lesser amount than the maximum civil penalty amount  
12 specified by this part if, based on the facts and circumstances of  
13 the particular case, to do otherwise would result in an award that  
14 is unjust, arbitrary and oppressive, or confiscatory.

15 (f) For all provisions of this code except those for which a civil  
16 penalty is specifically provided, there is established a civil penalty  
17 for a violation of these provisions, as follows:

18 (1) If, at the time of the alleged violation, the person does not  
19 employ one or more employees, the civil penalty is five hundred  
20 dollars (\$500).

21 (2) If, at the time of the alleged violation, the person employs  
22 one or more employees, the civil penalty is one hundred dollars  
23 (\$100) for each aggrieved employee per pay period for the initial  
24 violation and two hundred dollars (\$200) for each aggrieved  
25 employee per pay period for each subsequent violation.

26 (3) If the alleged violation is a failure to act by the Labor and  
27 Workplace Development Agency, or any of its departments,  
28 divisions, commissions, boards, agencies, or employees, there shall  
29 be no civil penalty.

30 (g) (1) Except as provided in paragraph (2), an aggrieved  
31 employee may recover the civil penalty described in subdivision  
32 (f) in a civil action pursuant to the procedures specified in Section  
33 2699.3 filed on behalf of himself or herself and other current or  
34 former employees against whom one or more of the alleged  
35 violations was committed. Any employee who prevails in any  
36 action shall be entitled to an award of reasonable attorney's fees  
37 and costs. Nothing in this part shall operate to limit an employee's  
38 right to pursue or recover other remedies available under state or  
39 federal law, either separately or concurrently with an action taken  
40 under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(l) The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

1 (n) The agency or any of its departments, divisions,  
2 commissions, boards, or agencies may promulgate regulations to  
3 implement the provisions of this part.

4 *SEC. 2. Section 2699.3 of the Labor Code is amended to read:*

5 2699.3. (a) A civil action by an aggrieved employee pursuant  
6 to subdivision (a) or (f) of Section 2699 alleging a violation of any  
7 provision listed in Section 2699.5 shall commence only after the  
8 following requirements have been met:

9 (1) The aggrieved employee or representative shall give written  
10 notice by certified mail to the Labor and Workforce Development  
11 Agency and the employer of the specific provisions of this code  
12 alleged to have been violated, including the facts and theories to  
13 support the alleged violation.

14 (2) (A) The agency shall notify the employer and the aggrieved  
15 employee or representative by certified mail that it does not intend  
16 to investigate the alleged violation within 30 calendar days of the  
17 postmark date of the notice received pursuant to paragraph (1).  
18 Upon receipt of that notice or if no notice is provided within 33  
19 calendar days of the postmark date of the notice given pursuant to  
20 paragraph (1), the aggrieved employee may commence a civil  
21 action pursuant to Section 2699.

22 (B) If the agency intends to investigate the alleged violation, it  
23 shall notify the employer and the aggrieved employee or  
24 representative by certified mail of its decision within 33 calendar  
25 days of the postmark date of the notice received pursuant to  
26 paragraph (1). Within 120 calendar days of that decision, the  
27 agency may investigate the alleged violation and issue any  
28 appropriate citation. If the agency determines that no citation will  
29 be issued, it shall notify the employer and aggrieved employee of  
30 that decision within five business days thereof by certified mail.  
31 Upon receipt of that notice or if no citation is issued by the agency  
32 within the 158-day period prescribed by subparagraph (A) and this  
33 subparagraph or if the agency fails to provide timely or any  
34 notification, the aggrieved employee may commence a civil action  
35 pursuant to Section 2699.

36 (C) Notwithstanding any other provision of law, a plaintiff may  
37 as a matter of right amend an existing complaint to add a cause of  
38 action arising under this part at any time within 60 days of the time  
39 periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by certified mail to the Division of Occupational Safety and Health and the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

1 (3) (A) Nothing in this subdivision shall be construed to alter  
2 the authority of the division to permit long-term abatement periods  
3 or to enter into memoranda of understanding or joint agreements  
4 with employers in the case of long-term abatement issues.

5 (B) Nothing in this subdivision shall be construed to authorize  
6 an employee to file a notice or to commence a civil action pursuant  
7 to Section 2699 during the period that an employer has voluntarily  
8 entered into consultation with the division to ameliorate a condition  
9 in that particular worksite.

10 (C) An employer who has been provided notice pursuant to this  
11 section may not then enter into consultation with the division in  
12 order to avoid an action under this section.

13 (4) The superior court shall review and approve any proposed  
14 settlement of alleged violations of the provisions of Division 5  
15 (commencing with Section 6300) to ensure that the settlement  
16 provisions are at least as effective as the protections or remedies  
17 provided by state and federal law or regulation for the alleged  
18 violation. The provisions of the settlement relating to health and  
19 safety laws shall be submitted to the division at the same time that  
20 they are submitted to the court. This requirement shall be construed  
21 to authorize and permit the division to comment on those settlement  
22 provisions, and the court shall grant the division's commentary  
23 the appropriate weight.

24 (c) A civil action by an aggrieved employee pursuant to  
25 subdivision (a) or (f) of Section 2699 alleging a violation of any  
26 provision other than those listed in Section 2699.5 or Division 5  
27 (commencing with Section 6300) shall commence only after the  
28 following requirements have been met:

29 (1) The aggrieved employee or representative shall give written  
30 notice by certified mail to the Labor and Workforce Development  
31 Agency and the employer of the specific provisions of this code  
32 alleged to have been violated, including the facts and theories to  
33 support the alleged violation.

34 (2) (A) The employer may cure the alleged violation within 33  
35 calendar days of the postmark date of the notice. The employer  
36 shall give written notice by certified mail within that period of  
37 time to the aggrieved employee or representative and the agency  
38 if the alleged violation is cured, including a description of actions  
39 taken, and no civil action pursuant to Section 2699 may commence.

1 If the alleged violation is not cured within the 33-day period, the  
2 employee may commence a civil action pursuant to Section 2699.

3 (B) ~~No~~(i) *Subject to the limitation in clause (ii), no employer*  
4 *may avail himself or herself of the notice and cure provisions of*  
5 *this subdivision more than three times in a 12-month period for*  
6 *the same violation or violations contained in the notice, regardless*  
7 *of the location of the worksite.*

8 (ii) *No employer may avail himself or herself of the notice and*  
9 *cure provisions of this subdivision with respect to alleged violations*  
10 *of paragraph (6) or (8) of subdivision (a) of Section 226 more than*  
11 *once in a 12-month period for the same violation or violations*  
12 *contained in the notice, regardless of the location of the worksite.*

13 (3) If the aggrieved employee disputes that the alleged violation  
14 has been cured, the aggrieved employee or representative shall  
15 provide written notice by certified mail, including specified  
16 grounds to support that dispute, to the employer and the agency.  
17 Within 17 calendar days of the postmark date of that notice, the  
18 agency shall review the actions taken by the employer to cure the  
19 alleged violation, and provide written notice of its decision by  
20 certified mail to the aggrieved employee and the employer. The  
21 agency may grant the employer three additional business days to  
22 cure the alleged violation. If the agency determines that the alleged  
23 violation has not been cured or if the agency fails to provide timely  
24 or any notification, the employee may proceed with the civil action  
25 pursuant to Section 2699. If the agency determines that the alleged  
26 violation has been cured, but the employee still disagrees, the  
27 employee may appeal that determination to the superior court.

28 (d) The periods specified in this section are not counted as part  
29 of the time limited for the commencement of the civil action to  
30 recover penalties under this part.

31 ~~SEC. 2.~~

32 *SEC. 3.* Section 2699.5 of the Labor Code is amended to read:

33 2699.5. The provisions of subdivision (a) of Section 2699.3  
34 apply to any alleged violation of the following provisions:  
35 subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5,  
36 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205,  
37 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section  
38 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5),  
39 inclusive, (7), and (9) of subdivision (a) of Section 226, Sections  
40 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8,



1 and 231, subdivision (c) of Section 232, subdivision (c) of Section  
2 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of  
3 Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511,  
4 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851,  
5 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025,  
6 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of  
7 Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198,  
8 subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290,  
9 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,  
10 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392,  
11 1683, and 1695, subdivision (a) of Section 1695.5, Sections  
12 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6,  
13 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47,  
14 Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and  
15 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800,  
16 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and  
17 Sections 3095, 6310, 6311, and 6399.7.

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